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In pursuance of plain English, forthwith

It's time for lawyers and contracts to use plain English

One of the worst examples of outdated legal writing style today is the document most familiar to the home-buying public - the standard form Agreement of Purchase and Sale used by the Toronto Real Estate Board and the Ontario Real Estate Association.

It must have been written by lawyers because no real estate agent or broker could ever write this badly.

What's wrong with this type of legal writing today? Recently, I met with Jane Griesdorf, owner of The Writing Consultants (<http://www.writingconsultants.com>). A former English teacher, she devotes her career now to teaching lawyers and other professionals to write clearly and effectively. She tells lawyers to avoid the use of "lawyerisms," which create a cloud of fog around the meaning of the document.

Several weeks ago, Griesdorf presented a program called Write This Way to a sold-out seminar at the Law Society of Upper Canada. Here are just a few of the worst examples of lawyer writing she cited:

- Use of meaningless doubles, such as any and all, first and foremost, full and complete.
- Redundant modifiers, such as completely finish, past history, final outcome, terrible tragedy, period of time, end result.
- Throat clearing - unnecessary words such as basically, actually, virtually and doubtlessly.
- Overly long sentences and paragraphs.
- Heavy language with mouthfuls of unnecessary words, such as pursuant to, at your earliest convenience, in all probability.
- Stacking numerous prepositional phrases in the same sentence - phrases beginning with words such as to, for, in, of, concerning, in, about or with.
- Archaic vocabulary - words nobody uses anymore, except lawyers.

By these guidelines, the standard sale agreement is a textbook example of how not to write a contract. Its longest sentence, for example, is 207 words, followed in the same paragraph with another sentence of a mere 140 words. How a lay person - never mind a lawyer - is supposed to understand this awful prose is beyond me.

Purchaser's deposits in this contract are not merely attached - they are "submitted herewith."

If the offer is not accepted within a time limit, it becomes "null and void." Not just null. Not just void. But null and void.

The parties "acknowledge and confirm" broker representation, presumably because one of these words alone is just not enough.

I gave up counting the words that nobody uses anymore - words such as hereto, herein, notwithstanding, whereby, the undersigned, in that regard, and hereinafter provided.

My favourite lawyerism in the contract is "notwithstanding anything contained herein to the contrary. . ."

The purchaser's deposit is not held in trust until completion. It is held in trust "pending" completion.

One paragraph begins with the words, "It is understood that . . ." The real estate associations must be afraid that removal of those totally unnecessary words will mean that the parties to the agreement do not understand what follows.

At the bottom of the agreement, the purchasers and vendors cannot simply sign the agreement. Breaking numerous rules of writing clarity, the document's turgid prose says "In witness whereof I have hereunto set my hand and seal."

The style of the standard condominium resale agreement is somewhat better, if only because its longest sentence is a mere 138 words instead of 207. It repeats many of the style problems with the freehold offer, but goes on to use many others.

If the condominium board must consent to the sale, for example, the vendor must apply "forthwith." Immediately, or even right away, is probably not soon enough.

Deadlines in the agreement may be amended by lawyers "who may be specifically authorized in that regard."

Builder agreements for new homes and condominiums are many times longer than the resale forms used by the real estate boards. Typically, they are much worse in terms of writing clarity and simplicity of terminology.

In other fields of law, ordinary contracts written by lawyers often begin "This indenture witnesseth. . ." Leases are written "in pursuance of" the Tenant Protection Act.

It is not just contracts that are filled with "legaldegook" (a combination of legalese and gobbledegook). In their daily correspondence, many lawyers still persist in writing like they think lawyers are supposed to write.

It may come as a surprise to some members of the legal profession, but King James I is no longer on the throne of England, and the archaic style of writing his scholars used for his landmark translation of the Bible is no longer appropriate for legal writing almost 400 years later. When the King James Bible was published in 1611, it was written in what was then the most elegant and up-to-date English.

Today, archaic writing style is all but confined to the ancient texts - except for the legal profession, which persists in creating 21st century contracts and documents which look like they were written by King James using a computer.

If any agreements should be written in plain English, they should be the standard form agreements of real estate boards across Ontario, as well as the many builder agreements used for new homes and condominiums.

Many jurisdictions in the United States, at the state and federal level, require the use of plain English in statutes and consumer contracts. In Canada, some commercial contracts, including the occasional insurance policy, as well as the Standard Charge Terms of at least one Canadian mortgage lender, are voluntarily written in clear, simple English.

The real estate industry, and those responsible for the creation of its contracts, should be leaders in the area of making consumer contracts user-friendly and readable in plain, everyday language. It's time to scrap the old contracts and use plain English to say the same thing.

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